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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	CC Docket No. 98-146
Capability to All Americans in a Reasonable	)	
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

To: The Commission

COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP

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SUMMARY

Rural communities are more dependent on telecommunications services than other communities. Rural communities rely on telecommunications services to encourage economic development, improve educational opportunities, improve healthcare, and increase commerce. Rural communities need broadband capability that can support high-speed Internet access and data services, and rural communities need increased advanced graphics and video capabilities and services.

Rural telecommunications providers, specifically rural telephone companies and their affiliates, are currently deploying a wide range of advanced telecommunications services to rural areas as contemplated by Section 706 of the Telecommunications Act 1996. Rural telecommunications providers currently offer or plan to offer such services as high-speed Internet access, advanced video services such as video conferencing and distance learning, and advanced wireless services such as Local Multipoint Distribution Service ("LMDS") and low mobility local service over Commercial Mobile Radio Services ("CMRS") spectrum. Rural telecommunications companies are deploying and will continue to deploy advanced services to rural areas. Unfortunately, the Commission's proposals in the companion Notice of Proposed Rulemaking ("*NPRM*") regarding the structural separation requirements for an unregulated advanced services affiliate will actually discourage rural telephone companies from deploying advanced capabilities. It will be impossible for rural telephone companies to comply with the proposed separation requirements. Absent the ability to meet the proposed separation requirements, rural telephone Companies will be forced to allow competitors to unbundle

elements of their advanced networks, in effect building advanced networks for their competitors' benefit.

Wireless systems will be a cost-effective means of deploying advanced services to rural areas. Indeed, providing wireless local loop or data services, and adding mobility to such services as Internet access, are in themselves advanced services. Almost half of the LMDS auction winners are affiliated with rural telephone companies. Many of these companies intend to provide advanced services such as high-speed Internet access and video conferencing to rural communities. Many companies also intend to use LMDS to offer competitive video programing services and/or to expand their telephone service areas by offering competitive wireless local loop and high speed data services.

Rural CMRS carriers are also offering advanced services. Numerous rural licensees are either offering or intend to offer low mobility or fixed local loop service over CMRS spectrum.

In order to facilitate further use of wireless spectrum to provide advanced services, the Commission should lift the 45 megahertz CMRS spectrum cap for rural areas and preempt to the maximum extent possible state rate and entry regulation of "fixed" wireless services. The Commission should provide regulatory certainty for the provision of advanced services by wireless carriers and should adopt the least burdensome regime possible. In this respect, the Commission should, to the maximum extent possible, forbear from enforcing provisions of the Act and the rules against rural wireless providers.

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The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these comments in response to the *Notice of Inquiry* ("*NOI*") released by the Federal Communications Commission ("FCC" or "Commission") on August 7, 1998 in the above-captioned proceeding.[1] RTG specifically addresses the deployment of advanced services to rural areas by rural telephone companies and by rural wireless providers such as rural Local Multipoint Distribution Service ("LMDS") licensees and other fixed wireless providers of local loop and data services. RTG also suggests actions which the Commission could take to encourage deployment of advanced services to rural areas as required by Sections 309(j) and 706 of the Telecommunications Act 1996 ("1996 Act").

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[1] The *NOI* was released as a companion to *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 98-188, CC Docket No. 98-147 (rel. August 7, 1998) ("*MO&O and NPRM*").

I. STATEMENT OF INTEREST

RTG is a group of rural wireless telecommunications providers who have joined together to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and underserved sections of the country. Many of these services are advanced telecommunications services pursuant to Section 706. RTG's members provide wireless telecommunications services, such as cellular telephone service, Personal Communications Service ("PCS"), and Multichannel Multipoint Distribution Service ("MMDS") to their subscribers. Many of RTG's members also hold LMDS licenses and intend to use LMDS to introduce advanced telecommunications capabilities and services, as well as competition in the local exchange and video distribution markets, in rural areas. One of RTG's members also holds Wireless Communications Services ("WCS") licenses and intends to use WCS to provide advanced telecommunications capabilities and services in rural parts of Texas. RTG has a vested interest in the outcome of the *NOI*.

II. DISCUSSION

A. Rural Communities Have a Critical Need for Advanced Telecommunications Capabilities and Services.

1. Rural Dependence on Telecommunications Capabilities and Services

In the *NOI*, the Commission asks whether rural communities are more dependent on telecommunications services than other communities.[2] The answer is unequivocally yes. Without access or with only limited access to essential businesses and services, rural

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[2] *NOI* ¶ 65.

communities cannot prosper. The key factor in rural economic development is to close the "distance gap". In order to attract businesses, jobs, and new residents (and even to maintain population), rural areas must have sufficient telecommunications infrastructure and advanced telecommunications capabilities and services. The distance a rural community is from a metropolitan area determines whether rural residents have access to key businesses and services. The further a rural community is from the metropolitan area, the less accessible such businesses and services become to rural residents. Advanced telecommunications capabilities and services[3] can close the distance gap by creating a "virtual proximity" for rural communities. Urban and suburban areas have proximity between businesses and services. That is, businesses and residences are generally conveniently clustered together around essential services. In order for rural areas to attract and maintain businesses, the telecommunications systems must provide virtual proximity to other businesses and services located in suburban and urban areas. This virtual proximity is achievable through the Internet, video conferencing, two-way entertainment video programming, two-way access to internal databases and Intranets and a host of other advanced telecommunications services.

Rural areas are also more dependent on telecommunications services to ensure that rural communities receive a level of education and healthcare equivalent to that received by urban and suburban areas. For example, a large suburban high school may offer many foreign language courses, while a rural high school may offer no foreign language instruction or perhaps one such

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[3] Unless otherwise clearly indicated, references to advanced services or to advanced capabilities includes both advanced telecommunications capabilities and the advanced telecommunications services provided with such capabilities.

course. By offering distance learning, where several rural schools are linked together, rural communities can offer their students more courses thereby providing a more diversified education for rural students. Sharing teachers and resources through distance learning allows rural residents to stay in their communities, thereby allowing rural communities to remain viable. On the other hand, if rural schools fail, then rural communities die.[4]

Similarly, urban hospitals have the ability to pull from a large talent pool in the community. Advanced telecommunications services potentially allow rural communities to pull from a national pool of expertise and knowledge thus allowing rural areas to receive a level of healthcare provision more closely equivalent to more densely populated areas. Advancements in technology allow rural communities to send data instantaneously to doctors and hospitals in densely populated areas, an ability which can prove critical in the provision of emergency and critical care to rural residents. The first 30 minutes of treatment can make the difference between saving a life and losing a life. Having the advanced telecommunications equipment in place in rural health centers will mean the world of difference in rural America.[5]

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[4] The public school is the lifeblood of a rural community. If the schools are not supported and kept viable, rural residents must leave the rural community in order to obtain adequate schooling for their children. It is a vicious cycle in Rural America. If school age children depart the school, the school cannot be maintained. If the school cannot be maintained and is forced to close, other residents must also leave the community. Bussing a child 60 miles or more to school each morning is the norm in many rural areas. If a school is closed, parents are faced with the choice of bussing their children an even greater distance or abandoning their community and moving closer to the new school.

[5] On a recent site visit to Lovington, New Mexico, Commissioner Harold Furchgott-Roth visited a rural health center in the process of constructing a telemedicine wing. The rural health center will bring the project to fruition with the assistance of Leaco Rural Telephone Cooperative, Inc., one of RTG's members. The closest full service hospital is more than a two hour drive from

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The same reasoning applies to rural libraries, museums and other information sources. Rural areas are more dependent on telecommunications than other communities to achieve an equivalent level of information distribution. Residents of most urban and university communities typically have access to a variety of museums and research facilities. Rural communities do not have such educational resources at their disposal. Advanced telecommunications, however, will allow rural residents to take virtual tours of urban museums and libraries and to tap other similar information sources.

Finally, rural communities may be more dependent on various forms of electronic commerce than other communities. In urban areas, it may be a simple matter to visit a shopping mall to select items from literally hundreds of stores. Rural communities do not have the luxury of as many stores and options from which to choose. Via electronic commerce, however, rural communities have the potential to select items from around the country and indeed the world with the same ease as their urban and suburban counterparts. This concept applies to everything from "renting" motion pictures to ordering medicine from discount outlets. Rural communities, therefore, are in many ways more dependent on telecommunications services than other communities.

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[5](...continued)
Lovington. There are no specialist physicians in the area. To obtain treatment, residents must drive a minimum of two hours to reach doctors in Lubbock, Texas. As a result, rural patients often put off treatment. This delay in treatment often causes a simple treatment to become more complex. With telemedicine, these specialists will be able to treat patients more quickly. Patients will no longer be deterred by distance from seeking timely medical treatment.

2. Types of Service Required

The Commission also seeks comment on what forms of advanced telecommunications capability rural areas will need most, and whether they are the same as those in other communities.[6] Rural areas, like other communities, will need affordable high-speed data capabilities such as high-speed Internet access. Rural areas will also need additional graphics and video services ranging from expanded video programming options to video conferencing for schools, hospitals and businesses. Although other communities will need advanced video services, rural areas are more dependent on such video capacity to bridge the distance gap. Advanced video capabilities are needed to provide such services as distance learning, tele-medicine, virtual shopping, virtual tours and expanded learning experiences. Accordingly, rural communities need a greater level of advanced video capability than other areas.

B. Rural Telephone Companies Are Deploying Advanced Services To Rural Areas, and the Commission and the States Should Adopt Policies to Encourage Such Deployment.

1. *Current and Future Rural Telephone Company Deployment*

Both the *NOI* and the accompanying *NPRM* reveal the Commission's mistaken perception that advanced services are not being deployed to rural areas. In fact, rural telephone companies and their affiliates are currently deploying advanced services to rural areas. Many of RTG's members are currently offering xDSL service within their telephone service areas, and numerous other member-companies plan on offering xDSL in the future. RTG also notes that the

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[6] *NOI* ¶ 65.

vast majority of rural telephone companies offer local Internet access to their subscribers. One of RTG's members provides low mobility wireless service over CMRS spectrum as an alternative to traditional local loop service. Several of RTG's members provide fixed wireless service over CMRS spectrum to customers that would not otherwise have telephone service at all.

In addition, nearly half of the LMDS auction winners are affiliated with rural telephone companies. This level of activity demonstrates rural telephone companies' commitment to deploying new and advanced services. As discussed below, many of these companies intend to utilize LMDS to provide high-speed Internet access, data services, and advanced video services. In addition, many rural companies plan to use LMDS to provide competitive local loop service in adjacent markets or to compete with incumbent multichannel video programming distributors ("MVPD").

2. *Rural Telephone Company Commitment*

In the *NOI*, the Commission seeks comment on whether there will be an adequate supply of advanced services in some areas and not in others.[7] It is inevitable that there will be different levels of advanced services in different types of rural areas. The differences, however, will not necessarily be along economic boundaries as suggested by the Commission.[8] Areas served by

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[7] *Id.*

[8] Great distances and difficult terrain may limit the deployment of advanced services in certain difficult to serve areas. In these areas, additional incentives will be needed. The Commission seeks comment on whether, in the future, advanced services and capabilities should qualify for universal service support. *NOI* ¶ 73. Although the Commission prefers "profit motivation" to encourage investment in advanced capabilities, certain high-cost areas may require universal support in order for companies to deploy advanced capabilities. Section 254 of the Act recognizes that the definition of universal service is an evolving one. At some point in the future, broadband capacity

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rural telephone companies are more likely to have an adequate supply of advanced services because these companies are a part of the communities they serve and have a stake in their communities. Rural telephone companies do not seek as great a return on investment ("ROI") as investors in capital markets, nor do they seek return in as short a time-frame.[9] Rural telephone companies invest in their rural communities' long-term future. In addition, cooperatively organized rural telephone companies, through their elected board of directors, must respond to political directives from the community, and accordingly are more likely to swiftly respond to the demand for advanced services.

3. *Disincentives to Rural Telephone Company Deployment of Advanced Services*

Rural telephone companies are currently responding to the demand for advanced services, and if allowed to do so, will continue to respond to this demand. Unfortunately, the Commission's decision and proposed rules in the *MO&O and NPRM* will discourage rural telephone companies from continuing to deploy advanced facilities and services. Pursuant to the *MO&O and NPRM*, incumbent local exchange carriers ("ILECs"), including rural telephone companies, are subject to Section 251(c) of the Act with respect to facilities used in the provision of advanced services, and the advanced services provided over such facilities. This includes the requirement that an ILEC offer unbundled access to equipment used in the provision of advanced

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[8](...continued)
may be as basic and necessary as plain old telephone service is today. Accordingly, the Commission should not rule out the possibility of using universal service support mechanisms to ensure that advanced telecommunications services reach all Americans, including those in high cost areas.

[9] Many venture capitalists seek a return within 18 months.

services. The *MO&O and NPRM* purports to allow ILECs to provide advanced services free of ILEC regulation if the ILEC creates a separate affiliate to provide the advanced services.

Unfortunately, it will be impossible for rural telephone companies to meet the separation requirements which the Commission proposes in the *MO&O and NPRM.*[10] Under the Commission's proposal, in order to qualify as a separate advanced services affiliate such affiliate and the rural telephone company must have separate officers, directors and employees.[11] In addition, an advanced services affiliate must not obtain credit under any arrangement that would permit a creditor to have recourse against the assets of the rural telephone company.[12] Both of these requirements undermine the ability of rural telephone companies to deploy advanced services, and accordingly, rural telephone companies will not be able to satisfy these requirements.

With respect to separate personnel, rural telephone companies lack the economies of scale necessary to support separate employees. It simply does not make sense to hire a staff of five or six people simply to provide xDSL service to a hundred customers. In addition, unlike urban areas, rural communities have a limited talent pool of individuals from which to draw. The Commission's proposal undermines a rural telephone company's ability to take advantage of its personnel's expertise in providing telecommunications service to rural areas. In addition, because many rural telephone companies are cooperatives, owned by their subscribers, it may be

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[10] RTG and/or its member-companies will be filing comments pursuant to the *NPRM.*

[11] *MO&O and NPRM* ¶ 96.

[12] *MO&O and NPRM* ¶ 96.

legally impossible for them to set-up a telecommunications affiliate with entirely separate officers and directors. At a minium, it will be extremely difficult politically to establish a separate affiliate with separate officers, directors and employees.

With respect to the limitation on obtaining credit, this proposal if adopted, would completely undermine the ability of rural telephone companies to obtain financing to invest in advanced services infrastructure. This proposed requirement utterly undermines RTG's members' business plans for providing advanced services. Without the ability to leverage their existing infrastructure, rural telephone companies will not be able to invest in advanced services.

Because rural telephone companies, unlike the BOCs, will not be able to establish advanced services affiliates that meet the Commission's proposed separation requirements, any investment rural telephone companies make in advanced services will be subject to appropriation by other companies pursuant to Section 251(c). Under the Commission's proposal, even advanced facilities, such as packet switches, acquired by a rural telephone company for the provision of advanced services via LMDS would potentially be subject to the requirements of Section 251(c). RTG also notes that allowing competitors access to unbundled advanced services network elements will facilitate cream skimming of important customers in rural areas.

The Commission's proposal for implementing Section 706, as reflected in the *MO&O and NPRM*, will discourage rural telephone companies from investing in advanced services, contrary to the directive of Section 706. The Commission's plan provides rural telephone companies no viable alternative under which to deploy advanced services. Either they deploy facilities subject to Section 251(c), or they deploy no advanced facilities at all.

In order to encourage rural telephone companies to continue to deploy advanced services, the Commission should allow them to do so through an affiliate that is not subject to the same onerous separation requirements as those imposed on the BOCs.

4. *Backbone Facilities*

Contrary to the BOCs' claim,[13] there is no reason to expect a shortage of backbone facilities capable of supporting Internet-related and advanced services in rural areas. Responding to demand for backbone facilities, rural telephone companies across the country have joined together to construct fiber facilities capable of supporting advances services. Rural telephone companies have deployed fiber backbone networks in Kansas, Oklahoma, Texas, North Carolina, South Carolina, Georgia, South Dakota, Minnesota, and Iowa among other states. Any near-term shortage of backbone facilities will be met by the market. Nor is there need for wholesale LATA modification to allow the BOCs to provide interLATA service so that rural communities have local access to the Internet. All of RTG's member companies provide local Internet access. The Organization for the Promotion and Advancement of Small Telephone Companies estimates that over 70% of its members provide local Internet access. The BOCs are merely using this argument as a ploy to obtain interLATA relief. They have never shown an interest in rural America, hence the existence of the rural telephone industry.

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[13] *NOI* ¶ 25.

C. Wireless Technologies Can Provide A Cost-Effective Means of Serving Rural Areas, and the Commission and the States Should Adopt Policies to Foster The Deployment of Advanced Wireless Services.

In the *NOI*, the Commission asks whether wireless communications can provide a cost-effective way of serving remote rural areas.[14] In general, wireless communications have an even greater potential than wireline communications for providing cost-effective advanced telecommunications services to remote rural areas. Wireless communications can be deployed quickly and relatively inexpensively. Wireless systems can bridge large distances without the need for placing expensive physical plant in the ground. Perhaps most importantly, wireless systems can be modified relatively easily to adapt to new and ever evolving advanced services. As discussed below, because of this great potential, the Commission should encourage the provision of advanced wireless services in rural areas. The comments below address the current and future deployment of specific types of advanced wireless communications, explain current impediments to the deployment of these services, and suggest actions which the Commission should take to remove these obstacles.

1. *High-Bandwidth Wireless — Terrestrial*

a. Removal of A-Block LMDS in-region restriction for rural telephone companies.

High-bandwidth wireless systems such as LMDS systems will greatly increase the deployment of advance services in the future. Numerous rural telephone companies intend to provide high-speed Internet access and advanced video services (such as conferencing and distance learning) using LMDS spectrum. In addition, rural companies intend to utilize high-

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[14] *NOI* ¶ 65.

band wireless systems to provide wireless local loop and data services and to introduce competition in the local telephony and video distribution markets outside their current wireline service areas. The use of wireless communications to provide competitive local loop and/or data services in itself should be considered "advanced" pursuant to section 706.[15]

The largest impediment to additional deployment of advanced wireless services is the prohibitive cost of customer premises equipment ("CPE"). In the absence of industry standards and a mass global market for equipment, CPE is generally prohibitively expensive for rural deployment, particularly for residential deployment. In addition, high-band wireless suppliers have not yet developed economically viable deployment models for rural deployment. Once equipment manufacturers develop a mass market for equipment, however, rural providers should be able to deploy advanced services to many rural areas via high-band wireless systems. Unfortunately, because of the propagation characteristics of the millimeter bands (within which LMDS falls) LMDS, in all likelihood, will not provide "the last mile" to remote areas.

In addition to economic impediments to high-band wireless deployment, various regulatory barriers hinder more widespread deployment. For example, the Commission's in-region restriction on A-Block LMDS spectrum[16] prevents numerous rural telephone companies from providing advanced wireless services. This restriction, as applied to rural telephone companies, is contrary to both Section 706 of the 1996 Act and Section 309(j) of the 1996 Act and should be modified to exclude rural telephone companies.

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[15] A number of rural telephone companies are ready to place orders for high-band wireless equipment to begin deploying advanced systems by the first quarter of 1999.

[16] 47 C.F.R. § 101.1003(a).

In order to encourage deployment of high-band wireless services, the Commission should establish the least burdensome regulatory regime possible. In comments filed in WT Docket 98-100 (Wireless Forbearance), RTG argued that the Commission should extend the broadest possible forbearance from enforcing provisions of the rules and the Act against wireless providers of local loop and data services. RTG advised the Commission that, at a minimum, it should designate a class of "rural wireless provider" and forbear from enforcing various provisions of the Act and the Commission's rules against this class of rural wireless providers.

b. Federal preemption of State entry and rate regulation.

In order to encourage deployment of high-band wireless services the Commission should also preempt state entry and rate regulation of LMDS services pursuant to Sections 332 and 253 of the Communications Act of 1934, as amended ("the Act"), and the inseverability doctrine.

i. Section 332

Pursuant to Section 332(c), and its conforming amendment to Section 2(b),[17] "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service. . . ."[18] Congress determined that this broad grant of federal jurisdiction was necessary to provide a uniform regulatory framework for all CMRS offerings, which, "by their nature, operate without regard to state lines. . . ."[19] Thus, Section 332(c), creates

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[17] "*Except as provided in . . . section 332 . . .* nothing in this Act shall be construed to apply or to give the Commission jurisdiction . . . over intrastate communication service." 47 U.S.C. § 152(b) (emphasis added).

[18] 47 U.S.C. § 332(c)(3).

[19] H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993).

a "[f]ederal regulatory framework governing the offering of all commercial mobile service."[20] The 1996 Act explicitly preserves Section 332(c)'s preemption provisions.[21]

The Commission's decision to permit CMRS licensees to offer all types of fixed, mobile, and hybrid services on their assigned spectrum was premised on the agency's authority under Section 332(c). Congress's mandate that the Commission encourage "the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans"[22] is also consistent with the use of a federal regulatory framework to govern fixed and mobile wireless services. The wireless industry has flourished under the regulatory scheme set forth in Section 332(c). As wireless providers begin to offer more advanced telecommunications capabilities, on either a fixed or a mobile basis, Section 332(c) remains a critical facilitator of such development.

ii. Inseverability Doctrine

Under the inseverability doctrine set forth in *Louisiana PSC v. FCC*,[23] because "it is not possible to separate the interstate and intrastate components" of wireless regulation, federal regulation of fixed and mobile wireless services must preempt state law.[24] In particular, there are

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[20] H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993).

[21] *See* 47 U.S.C. § 253(e) ("nothing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers").

[22] 47 U.S.C. § 706(a).

[23] 476 U.S. 355 (1986) ("*Louisiana PSC*").

[24] *Id.* At 376 n.4. *See also Public Service Commission of Maryland v. FCC*, 909 F.2d 1510 (D.C. Cir. 1990) (based on inseverabiity, FCC has the power to preempt state regulation of the fees charged by LECs to discontinue interstate *and* intrastate telephone service); *Public Utility*

(continued...)

a number of technical and economic reasons why the interstate and intrastate components of the regulation of wireless services are inseverable. Foremost among these is the fact that wireless service areas — including Major Trading Areas ("MTAs") for broadband CMRS,[25] the Department of Commerce's Economic Areas ("EAs") for wide-area SMR systems,[26] and Basic Trading Areas ("BTAs") for LMDS[27] — were drawn without regard to state boundaries. Given these interstate service areas, wireless carriers have no reason to monitor the jurisdictional nature of each call. Moreover, even if it were technically possible to engage in such a classification of calls, it would be prohibitively expensive to do so. Additionally, because radio transmitters can be located near state borders and their corresponding signal coverage does not stop at the border, states cannot have jurisdiction over the service.

iii. Section 253 - Barriers to entry

State regulation of fixed and mobile wireless offerings could violate the pro-competitive purpose of Section 253 of the Communications Act. Section 253 prohibits state legal

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[24](...continued)
Commission of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989) (state regulations limiting the ability of private microwave network users to interconnect to the LEC of their choice preempted based on inseverability); *Illinois Bell Telephone Co. v. FCC*, 883 F.2d 104 (D.C. Cir. 1989) (state regulations denying independent vendors the opportunity to market their customer premises equipment along with Bell Operating Company Centrex services preempted based on inseverability); *People of the State of California v. FCC*, 75 F.3d 1350 (9th Cir.) (State regulations concerning per line blocking of caller ID services preempted based on inseverability); *cert denied*, 517 U.S. 1216 (1996).

[25] *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 8 FCC Rcd 7733 (1993) (Second Report and Order).

[26] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of an SMR System in the 800 MHZ Frequency Band*, 11 FCC Rcd 1463 (1995) (Second Report and Order).

[27] *LMDS Second Report and Order*, 12 FCC Rcd at 12604.

requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[28] Both fixed and mobile wireless operators are protected by this provision. With regard to LMDS providers, the FCC has specifically indicated that it will, pursuant to Section 253(a) of the Act, preempt state barriers to entry.[29] Because any state entry or rate regulation of fixed or mobile advanced wireless services could constitute a prohibited barrier to entry, it should be subject to preemption by the FCC under Section 253(d).

2. *Commercial Mobile Radio Services ("CMRS")*

a. Mobility as "advanced" service

As an initial matter, RTG notes that mobility, the very heart of CMRS, in itself renders CMRS an advanced service. Consumers will soon be able to check not only their voice mail, but their email from almost any location. In addition, consumers will soon be able to utilize a phone at their homes and then take that phone with them wherever they go. In this respect, CMRS can offer advanced services on par with or better than wireline services because CMRS can add mobility to traditional wireline service. Such mobility, by itself, should render CMRS services "advanced" pursuant to Section 706.

b. State Regulation

In the *NOI*, the Commission seeks comment on what regulatory barriers impede greater use of CMRS spectrum for both fixed and mobile advanced services. CMRS providers have

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[28] 47 U.S.C. § 253(a).

[29] *LMDS Second Report and Order*, 12 FCC Rcd at 12702.

enjoyed a successful, highly competitive industry, free of state rate and entry regulation. Most CMRS carriers are loath to wade into the mire of burdensome state regulation. Accordingly, CMRS carriers refrain from offering advanced fixed services that they would otherwise offer in a deregulated environment. Accordingly, as discussed above, in order to encourage greater use of CMRS spectrum for advanced fixed services, the Commission should free such providers to the maximum extent possible from burdensome state regulation.

c. CMRS Spectrum Cap

In rural areas, it is exceedingly unlikely that the market will support nine different CMRS carriers offering traditional mobile voice service. Two cellular providers currently operate facilities in most rural areas. PCS deployment is less certain. PCS construction requirements, which are based on population coverage,[30] do not encourage deployment to rural areas. Large amounts of CMRS spectrum, therefore, may lie fallow in rural areas. Currently, the 45 megahertz CMRS spectrum cap[31] prohibits an entity from holding an attributable interest in more than 45 megahertz of CMRS spectrum. Since many rural telephone companies hold attributable interests in a cellular provider, they are restricted from owning more than 30 megahertz of PCS spectrum. By lifting the CMRS spectrum cap, at least in rural areas, the Commission could encourage companies with commitments to those areas to utilize, through partitioning and disaggregation, otherwise unused CMRS spectrum for advanced services. The propagation characteristics of PCS spectrum are well suited for delivering local loop service to

[30] 47 C.F.R. § 24.203

[31] 47 C.F.R. § 20.6.

remote rural populations. In addition, allowing licensees to aggregate more than 45 megahertz of spectrum in rural areas may help eliminate any potential limitations on the use of CMRS spectrum to support high-speed data communications.

Lifting the 45 megahertz spectrum cap in rural areas will also allow such areas to benefit from the technological advances promised by the development of Third Generation ("3G") mobile systems. 3G systems are characterized by high-speed, high-bandwidth services that support a variety of applications ranging from toll quality voice services to Phase II services (large video and data file transfers and high-fidelity and high-resolution video with transfer rate ranges from 2-10 Megabits per second ("Mbps")).

3. Spectrum Management Issues

In the *NOI*, the Commission suggests certain actions which it believes might significantly encourage wireless deployment of advanced services.[32] Specifically, the Commission suggests that such deployment "might be significantly advanced by auctioning more spectrum, [and] by the widest possible definition of the services that can be provided on spectrum..."[33] To the contrary, these actions could actually discourage wireless deployment.

First, although RTG applauds flexible use of spectrum up to a point, in the absence of some standards and guidelines, equipment manufacturers lack a mass market for their products and accordingly sufficient incentive to develop equipment for certain spectrum. The result is either very little equipment, or equipment that is prohibitively expensive for rural carriers to

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[32] *NOI* ¶ 74.

[33] *Id.*

deploy in their markets. The Commission must carefully balance the need for flexibility and innovation with the need to effectively manage spectrum.

Second, merely throwing more spectrum into the mix will not encourage the deployment of wireless services. Financial markets and equipment suppliers are still digesting the spectrum that is currently allocated and auctioned. Surely, the PCS C-Block debacle, the Wireless Communication Services ("WCS") auction and the Interactive Video Distribution Services ("IVDS") auction have taught the Commission that just because spectrum is auctioned does not mean that it is actually used to provide service to the public. The Commission is on the threshold of spectrum dumping, particularly in the millimeter bands. Such dumping can create uncertainty in financial markets, thus discouraging investment in advanced wireless systems. RTG cautions the Commission to examine the impact of newly allocated spectrum on the deployment of services utilizing previously auctioned spectrum.

The Commission has made enough spectrum available to allow wireless carriers to compete with wireline carriers in densely populated areas. Unfortunately, the Commission has not done enough to make spectrum available with propagation characteristics that are favorable for the provision of advanced services to remote rural areas. The Commission must develop stronger incentives to encourage licensees to partition and disaggregate spectrum to rural telecommunications providers. Such incentives could include adopting a "fill-in" policy similar to that adopted for the cellular service whereby after a period of time, interested entities could apply for licenses to serve unserved areas. The Commission should also consider offsetting universal service contributions made by wireless licensees who partition and/or disaggregate spectrum to rural telecommunications carriers since this has the effect of promoting the